

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re:)	
)	
GRAY TELEVISION LICENSEE, LLC)	CSR No. 8759-N
WTAP-TV (Fac. ID No 4685))	
WIYE-LD (Fac. ID No. 130392))	
WOVA-LD (Fac. ID No. 125125))	
Parkersburg, West Virginia)	
)	
Petition for Waiver of Sections 76.92(f) &)	
76106(a) of the Commission's Rules)	

To: Office of the Secretary
Attn: Chief, Media Bureau

OPPOSITION TO PETITION FOR SPECIAL RELIEF

Pursuant to Section 76.7(b)(1) of the rules of the Federal Communications Commission, 47 C.F.R § 76.7(b)(1), WVAH Licensee, LLC, licensee of WVAH-TV, Charleston, West Virginia ("WVAH"), by its attorneys, hereby submits this Opposition to Petition for Special Relief filed by Gray Television Licensee, LLC ("Gray"), licensee of WTAP-TV, WIYE-LD, and WOVA-LD, Parkersburg, West Virginia.¹ For the reasons set forth below, the Commission should deny the Petition because Gray has not submitted the viewing data required to establish that WVAH-TV is no longer significantly viewed in the community of Parkersburg.

¹ See Petition for Special Relief, Gray Television Licensee, LLC. The Petition was placed on public notice on January 22, 2012 (Rep. No. 0389). At the outset, it is important to note that to the extent that Gray is requesting network and syndicated duplication for low power television stations, the Bureau should deny the request because the Commission's rules do not provide low power television stations the authority to exercise network non-duplication rights. See 47 USC §§ 534(h)(1)(A) & B; see also *Storefront Television*, 21 FCC Rcd 9929 (MB 2006). The same rationale should apply equally to any WTAP-TV subchannel as it is "secondary" to a "primary" over-the-air channel.

In its Petition, Gray seeks a waiver of Sections 76.92(f) and 76.106(a) of the Commission's rules, the significantly viewed exception to the network non-duplication and syndicated exclusivity rules ("Exclusivity Rules").² Specifically, Gray seeks to gain network non-duplication and syndicated exclusivity protection against WVAH-TV in the community of Parkersburg, West Virginia, located in the Parkersburg, West Virginia, Designated Market Area ("DMA"). WVAH-TV has significantly viewed status in the DMA.³

A broadcast licensee seeking a waiver of the significantly viewed exception to the Exclusivity Rules faces a high burden of proof.⁴ A petitioner is required to demonstrate, for two consecutive years, that the station is no longer significantly viewed in the community at issue, based either on community-specific or cable-system specific viewing data. Where a Petitioner elects to submit community-specific data to support a waiver of the significantly viewed exception to the Exclusivity Rules, each community that is subject to the waiver request must be represented in each survey period for which data is submitted to the FCC. *See, e.g., WTNH Broadcasting, Inc.*, 2012 FCC LEXIS 5156 (MB 2012) ("We expect petitioners who commission such data to include ... what communities (or zip codes) are covered"); *Gulf-California Broadcast Company*, 23 FCC

² 47 C.F.R. § 76.92(f) (significantly viewed exception to the network non-duplication rule); 47 C.F.R. § 76.106(a) (significantly viewed exception to the syndicated exclusivity rule).

³ *See Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Systems*, 36 FCC 2d 326, 379 (App. B) (1972); Significantly Viewed List, available at <http://www.fcc.gov/mb/significantlyviewedstations022509.pdf>. The contour of WVAH-TV includes the community of Parkersburg.

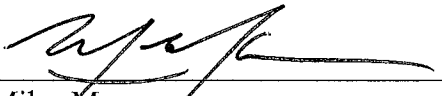
⁴ *Gulf-California Broadcast Company and Journal Broadcast Corporation*, 26 FCC Rcd 15027 at ¶ 8 (MB 2011) (Petitioners in "significantly viewed" cases face a "high burden" of proof); *KSTC-TV, LLC*, DA 10-1151 (MB 2010) (The "submission ... simply does not meet the *high burden* necessary for waiver of our rules.") (emphasis added).

Rcd 7406, 7411 (MB 2008) (“Rules for a community specific survey... require that each community be represented in each survey”).

Gray has failed to meet this burden for the community of Parkersburg because it has not submitted data for all of Parkersburg. In its Petition, Gray submits that there are that are only two zip codes in Parkersburg: 26101 and 26104. Yet according to the United States Postal Service website, there are three zip codes that are affiliated with the community of Parkersburg: 26101; 26104; and 26105.⁵

Gray may have shown that WVAH-TV did not meet the significantly viewed threshold in two of Parkersburg’s zip codes, but those two zip codes do not comprise the entire community of Parkersburg. As a result, Gray has excluded reporting viewing in Petersburg that could undermine its position. In short, Gray has improperly cherry-picked zip codes in Parkersburg without explanation, neglecting to survey zip code 26105, and, thus, Gray’s significantly viewed study is not representative of the community as a whole and does not meet the requirement that diary data for the community of Parkersburg is properly represented. Consequently, Gray has not met the FCC’s requirements and, thus, the Bureau should deny the Petition.

Respectfully submitted,

By: 
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Dated: February 11, 2013

⁵ See Exhibit 1.

EXHIBIT 1

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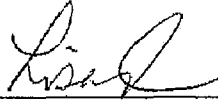
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DECLARATION OF LISA ASHER

I, Lisa Asher, am the Secretary of WVAH Licensee, LLC. I hereby declare under penalty of perjury that I have reviewed the foregoing Opposition and it is true and correct to the best of my knowledge.

A handwritten signature in cursive script, appearing to read 'Lisa Asher', is written over a horizontal line.

Lisa Asher

Dated: February 11, 2013

Certificate of Service

I, Julia Colish, a secretary in the law firm of Pillsbury Winthrop Shaw Pittman LLP, do hereby certify that I have on this 11th day of February 2013, caused a copy of the foregoing "OPPOSITION TO PETITION FOR SPECIAL RELIEF" to be served by First Class U.S. Mail postage prepaid, upon the following:

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